

SENATE BILL 1869  
By Herron

AN ACT to amend Tennessee Code Annotated, Title 11 and Title 66, Chapter 9, Part 3, relative to conservation easements.

WHEREAS, protection of the state's land, water, geological, biological, historical, architectural, archaeological, cultural, and scenic resources is desirable for the purposes of maintaining and preserving the state's natural and cultural heritage; and

WHEREAS, there is intense interest in assuring the maintenance of the state's natural and social diversity and health and in encouraging the wise management of productive farm and forest land; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 66, Chapter 9, is amended by deleting Part 3 in its entirety and by substituting instead the following language:

**§ 66-9-301.** The title of this act is, and may be cited as, the "Conservation Easement Act of 2005".

**§ 66-9-302.** It is the intent of the general assembly to enable an owner of real property to protect and preserve the natural, productive, or cultural features of the owner's real property, and to encourage the wise management of productive farm and forest land.

**§ 66-9-303.** As used in this act, unless the context otherwise requires:

(1)

(A) "Conservation easement" means a nonpossessory interest of a holder in real property imposing limitations or affirmative obligations for the benefit of the people of Tennessee, the purposes of which include

retaining land or water areas predominantly in their natural, cultural, scenic, open space, agricultural, or forested condition; retaining such areas as suitable habitat for fish, plants, or wildlife; retaining the structural integrity or physical appearance of sites or properties of historical, architectural, archaeological, or cultural significance; or maintaining existing land uses.

(B) "Conservation easement" also means an easement of view over the facade, or restrictions on the use of a structure included in the National Register or Tennessee Register whereby the external appearance of the structure is preserved by the sale, donation, or other surrender by the owner of the easement to a public body or exempt organization either in fee simple, for the owner's life or the life of another; or for a term of years.

(2) "Exempt organization" means any organization which has received a determination of exemption from the Internal Revenue Service under § 501(c)(3) and § 509(a)(1) or (a)(2) of the Internal Revenue Code, compiled in 26 U.S.C. §§ 501, 509.

(3) "Holder" means either:

(A) A public body empowered by the laws of this state or the United States to hold an interest in real property; or

(B) An exempt organization whose purposes or powers include retaining or protecting the natural, cultural, scenic, open space, agricultural, or forested values of real property, protecting natural features and resources, maintaining or enhancing air or water quality or preserving the natural, historical, architectural, archaeological or cultural aspects of

real property which is the recipient or grantee of a conservation easement;

(4) "National Register of Historic Places," or "National Register," means that listing of the state's historic, archaeological, architectural, cultural, and environmental resources as nominated by the state's liaison officer and which is kept by the national park service, the United States department of the interior, pursuant to the National Historic Preservation Act of 1966 (P.L. 89-665). Such listing is published in the federal register on a regular basis;

(5) "Public body" means the United States, states, counties, municipalities, metropolitan governments, the historic commission of any state, county, municipal, or metropolitan government, park or recreation authorities, and any other state, federal or local governmental entity;

(6) "Tennessee Register of Historic Places," or "Tennessee Register," means that listing of districts, sites, buildings, structures, and objects significant in Tennessee history, architecture, archaeology, and culture kept by the Tennessee historical commission pursuant to title 4, chapter 11, part 2; and

(7) "Third-party right of enforcement" means a right to enforce any of the terms of a conservation easement granted to a governmental body or private, nonprofit charitable or educational corporation, association or trust, which is not, but is eligible to be, a holder.

**§ 66-9-304.**

(a) Except as otherwise provided in this act, a conservation easement may be created, conveyed, recorded, assigned, released, modified, or otherwise altered or affected in the same manner as other easements. No conservation easement shall be acquired by eminent domain unless the easement is

necessary for the accomplishment of a specific public project which has been authorized by statute; provided, that any such acquisition by a state entity shall be subject to approval by the state building commission.

(b) No right or duty in favor of or against a holder and no right in favor of a person having a third-party right of enforcement arises under a conservation easement before its acceptance by the holder and recordation of the acceptance.

(c) A conservation easement is perpetual in its duration unless the instrument creating the easement otherwise provides.

(d) Conservation easements shall run with the land and be binding on any subsequent owner of the real property subject to the easement.

(e) A conservation easement shall be binding and shall not be extinguished if the easement holder is or becomes the owner in fee of the subject property.

(f) An interest in real property in existence at the time a conservation easement is created, including, but not limited to, any subsurface property interests or leases and any related rights of owners or leaseholders to remove or extract minerals or any mortgages, deeds of trust, security interests, or other liens, shall not be impaired or diminished in any way by the conservation easement unless the owner of the interest is a party to the conservation easement or consents to it and the consent is properly recorded and attached to the instrument creating the easement. A conservation easement shall not be construed to impair or diminish in any way an interest in adjacent or surrounding properties.

(g) This act shall not be construed to impair or diminish in any way the right of any person, entity, or governmental body authorized by the laws of this

state or the federal government to acquire a property interest through the exercise of eminent domain or condemnation.

**§ 66-9-305.**

(a) An action to enforce a conservation easement may be brought by any one or more of the following:

(1) An owner of an interest in the real property burdened by the easement;

(2) A holder of the easement;

(3) A person having a third-party right of enforcement;

(4) A beneficiary of the easement;

(5) The attorney general and reporter; or

(6) A person otherwise authorized by law.

(b) This act does not affect the power of a court to modify or terminate a conservation easement in accordance with the principles of law and equity applicable to other easements.

**§ 66-9-306.** A conservation easement shall be valid despite the following:

(a) It is not appurtenant to an interest in real property;

(b) It can be or has been assigned to another holder;

(c) It is not of a character that has been recognized traditionally at common law;

(d) It imposes a negative burden;

(e) It imposes affirmative obligations upon the owner of an interest in the burdened property or upon the holder;

(f) The benefit does not touch or concern real property; or

(g) There is no privity of estate or contract.

**§ 66-9-307.**

(a) Any instrument intended to create a conservation easement under this act shall contain an explicit reference to that effect.

(b) This act shall not apply to any interest created before the effective date of this act unless the instrument is amended to explicitly comply with this act.

(c) This act does not invalidate any interest, whether designated as a conservation or preservation easement or as a covenant, equitable servitude, restriction, easement, or otherwise, that is enforceable under any other law of this state.

**§ 66-9-308.**

(a) The easement shall be recorded in the register's office of the county in which the easement is located.

(b) The register's office shall mail, certified, a copy thereof together with notice as to the date and place of recordation, to the attorney general.

**§ 66-9-309.** No public money, derived either from a special fund or the general fund, shall be expended for capital improvement on any real property upon which a conservation easement has been granted except for:

(a) An improvement unrelated to the conservation easement or the purpose of the conservation easement; or

(b) An improvement of a property entered in the National Register of Historic Places, where a governmental body is the holder of the conservation easement and the capital improvement is solely for the use and benefit of the holder.

**§ 66-9-310.**

(a)

(1) When a conservation easement is held by a public body or exempt organization for the purposes of this chapter, the subject real property shall be assessed on the basis of the true cash value of the property or as otherwise provided by law, less such reduction in value as may result from the granting of the conservation easements.

(2) The value of the easement interest held by the public body or exempt organization shall be exempt from property taxation to the same extent as other public property.

(3) If a conservation easement in a structure is held by a public body or exempt organization for the term of a person's life or a term of years, the exemption shall apply for the length of the term and no longer.

(b) The owner of the fee shall have all rights and powers to appeal any assessment of such interest on the same basis as provided by law for property tax assessment appeals.

SECTION 2. This act shall take effect July 1, 2005 the public welfare requiring it.